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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

FELIPE VALDEZ RODRIGUEZ,

Defendant and Appellant.

B288701

(Los Angeles County Super. Ct. No. KA116728)

APPEAL from a judgment of the Superior Court of Los Angeles County, David V. Herriford, Judge. Affirmed.

James Koester, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Noah P. Hill and Corey J. Robins, Deputy Attorneys General, for Plaintiff and Respondent. Felipe Valdez Rodriguez was convicted by a jury of the attempted willful, deliberate and premeditated murder of Anthony Flores. On appeal Rodriguez contends there was insufficient evidence to support the jury's finding the attempted murder was deliberate and premeditated. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Information

Rodriguez and Angel Hernandez were charged in an information with one count of attempted murder (Pen. Code, §§ 664, 187, subd. (a)).¹ It was specially alleged the attempted murder was committed willfully, deliberately and with premeditation within the meaning of section 664, subdivision (a), and that Rodriguez had personally used and intentionally discharged a firearm, causing great bodily injury, in the commission of the offense within the meaning of section 12022.53, subdivisions (b), (c) and (d).

2. The Evidence at Trial

a. The August 27, 2014 shooting

Flores testified he was alone in his hotel room at the Park Inn in Covina on the evening of August 27, 2014. At 7:00 p.m. Flores answered a surprise knock on the door. Hernandez had arrived unannounced at the hotel room, accompanied by a second person. Flores knew Hernandez, but only by the nickname Smalls.² He did not know the other person, whom Hernandez

Statutory references are to this code.

Flores testified he had known Hernandez at the time for perhaps a week. He had sold Hernandez a cell phone; and, at the time of the sale, he happened to have on a table the equipment to create counterfeit credit cards by copying information from one

introduced as Raider. At trial Flores identified Hernandez and Rodriguez, who were seated in the courtroom, as Smalls and Raider.

Flores invited Hernandez and Rodriguez inside his hotel room. He did not know how Hernandez learned he was staying in that particular room and had no idea why he showed up there unexpectedly.

Rodriguez appeared to Flores to be under the influence of drugs. He was sweating, seemed irrational and looked "spun out." Flores explained he can recognize when someone is high on drugs because he uses methamphetamine.

Rodriguez and Hernandez wanted Flores to create a counterfeit credit card by copying a credit card that Hernandez brought, using identification information Rodriguez provided and the equipment Flores had with him in the hotel room. Flores told Hernandez he did not know how to create counterfeit cards, but would try. Flores attempted to comply using the equipment and a computer. He knew what he was doing was illegal.

Rodriguez and Flores took the counterfeit card and drove to a gas station near the hotel to attempt to use it. Before leaving for the gas station, Rodriguez told Hernandez, "Hold my gun," and handed a gun to Hernandez, who stayed in the room. At the gas station Rodriguez and Flores could not get the counterfeit

card to another. The equipment, which did not belong to Flores and which he did not know how to use, had become a topic of conversation; and Flores had explained to Hernandez its purpose. However, Flores did not tell Hernandez he copied credit cards, and the cell phone he sold Hernandez had not been stolen. When he sold the phone to Hernandez, he had not yet rented the hotel room where Hernandez and Rodriguez found him on August 27.

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card to work. Flores told Rodriguez the original credit card "was probably no good"; he explained all he did was copy the original card and the counterfeit card "can't work if [the original] didn't work." The two men returned to the hotel. Rodriguez did not speak to Flores during the return trip.

When they arrived at the hotel room, Flores sat on the couch. Rodriguez was upset because the card had not worked. He paced back and forth in front of Flores and said he wanted to show Flores he "wasn't messing around." Flores had not been talking to, or arguing with, Rodriguez. Rodriguez asked Hernandez for the gun, saying, "Give me the cuete." Flores understood "cuete" as a Spanish slang term for a gun. Hernandez took from his waistband a chrome-colored, medium sized, semiautomatic handgun, the same gun Rodriguez had earlier given Hernandez to hold, and handed it to Rodriguez.

At this point Rodriguez was standing about five feet from Flores, who was still sitting on the couch. As he saw the gun being handed to Rodriguez, Flores, although concerned, remained sitting without saying a word. Once he took the gun from Hernandez, Rodriguez immediately started shooting Flores in the chest. Rodriguez fired the gun seven or eight times, and Flores was hit by at least three bullets: One went through his chest; one perforated his stomach; and one grazed his upper body. Flores ran toward Rodriguez to grab the gun from him, and a struggle ensued. Flores grasped the barrel of the gun while Rodriguez held onto its grip. Flores succeeded in seizing the gun from Rodriguez; but it was too hot to hold, so it fell to the floor. Flores ran for the door, left the room and headed toward the lobby. Once there, he asked for help and lay on the lobby floor.

Flores, in shock, was transported to the hospital. Following surgery, Flores remained hospitalized for three days and had to return for additional treatment for six weeks. Flores testified that at the time of trial he still suffered pain from the abdominal gunshot wound and from fecal incontinence.

b. The subsequent investigation

Covina Police Officer Ulrich Ramirez testified he responded to a call at the Park Inn at 10:40 p.m. on August 27, 2014. When he arrived, he found Flores, who appeared to be suffering from gunshot wounds, lying on the floor in the middle of the hotel lobby. Flores stated he was shot and repeatedly declared, "I'm dying." He told Ramirez that Smalls from El Monte and another man tried to rob and kill him. He identified Smalls's friend as the shooter.

Covina Police Detective Stacy Franco, one of the investigating officers, determined Hernandez was a suspect based on inquiries about Smalls from El Monte. Flores then identified Hernandez as present at the shooting from a photo array. Hernandez was arrested two weeks after the shooting, and a handgun was recovered from the car in which he had been sitting. Senior criminalist Phil Teramoto of the Los Angeles County Sheriff's Department confirmed that three fired cartridge cases and two expended bullets recovered from the hotel room where Flores was shot had been fired from the gun seized from Hernandez.

After Hernandez's arrest Detective Franco identified Rodriguez as the shooter Raider with information derived in part from Hernandez's recorded telephone conversations while in custody, along with surveillance footage from the gas station visited by Flores and Rodriguez on August 27, 2014 and additional investigative work.

3. The Verdict and Sentencing

The jury found Rodriguez guilty of the attempted murder of Flores and found true the special allegation the attempted murder was willful, deliberate and premeditated.³ The jury also found true the special allegations Rodriguez had personally used and intentionally discharged a firearm causing great bodily injury to Flores within the meaning of section 12022.53, subdivisions (b), (c) and (d).

The trial court sentenced Rodriguez to life in state prison with the possibility of parole for attempted willful, deliberate and premeditated murder, with an additional term of 25 years to life for the firearm-use enhancement.

DISCUSSION

1. Standard of Review

"In assessing the sufficiency of the evidence supporting a jury's finding of premeditated and deliberate murder, a reviewing court considers the entire record in the light most favorable to the judgment below to determine whether it contains substantial evidence—that is, evidence which is reasonable, credible, and of solid value—from which a rational trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Mendoza* (2011) 52 Cal.4th 1056, 1068-1069; 4 see *People v. Mora and*

The jury was unable to reach a verdict as to Hernandez.

[&]quot;Murder that is premeditated and deliberated is murder of the first degree." (*People v. Pearson* (2013) 56 Cal.4th 393, 443.) "We do not distinguish between attempted murder and completed first degree murder for purposes of determining whether there is

Rangel (2018) 5 Cal.5th 442, 488 ["[a]lthough we assess whether the evidence is inherently credible and of solid value, we must also view the evidence in the light most favorable to the jury verdict and presume the existence of every fact that the jury could reasonably have deduced from that evidence"].)

""In cases in which the People rely primarily on circumstantial evidence, the standard of review is the same."" (People v. Salazar (2016) 63 Cal.4th 214, 242; see People v. Brooks (2017) 3 Cal.5th 1, 57 ["Substantial evidence includes circumstantial evidence and any reasonable inferences drawn from that evidence"].) "Mental state and intent are rarely susceptible of direct proof and must therefore be proven circumstantially." (People v. Thomas (2011) 52 Cal.4th 336, 355.) "An appellate court must accept logical inferences that the jury might have drawn from the circumstantial evidence." (People v. Elliot (2005) 37 Cal.4th 453, 466.) "Although it is the duty of the jury to acquit a defendant if it finds the circumstantial evidence is susceptible of two interpretations, one of which suggests guilt and the other innocence [citations], it is the jury, not the appellate court[,] which must be convinced of the defendant's guilt beyond a reasonable doubt. If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment." (People v. Ghobrial (2018) 5 Cal.5th 250, 278,

sufficient evidence of premeditation and deliberation." (*People v. Herrera* (1999) 70 Cal.App.4th 1456, 1462, fn. 8, disapproved of on other grounds in *People v. Mesa* (2012) 54 Cal.4th 191, 199.)

internal quotation marks omitted; see *People v. Casares* (2016) 62 Cal.4th 808, 823-824.)

2. Governing Law

"First degree murder 'has the additional elements of willfulness, premeditation, and deliberation which trigger a heightened penalty.' [Citation.] These elements require 'more than a showing of intent to kill." (*People v. Gomez* (2018) 6 Cal.5th 243, 282.) ""Deliberation" refers to careful weighing of considerations in forming a course of action; "premeditation" means thought over in advance." (*People v. Brooks, supra*, 3 Cal.5th at p. 58.)

"An intentional killing is premeditated and deliberate if it occurred as the result of preexisting thought and reflection rather than unconsidered or rash impulse.' [Citation.] The reflection may be arrived at quickly; it need not span a specific or extended period of time." (People v. Lopez (2018) 5 Cal.5th 339, 354-355; see People v. Gomez, supra, 6 Cal.5th at p. 282 [""The true test is not the duration of time as much as it is the extent of the reflection. Thoughts may follow each other with great rapidity and cold, calculated judgment may be arrived at quickly""].)

In *People v. Anderson* (1968) 70 Cal.2d 15, 26-27 (*Anderson*) the Supreme Court "identified three categories of evidence that tend to establish a premeditated and deliberate murder—planning, motive, and method." (*People v. Ghobrial, supra*, 5 Cal.5th at p. 278; see *People v. Gomez, supra*, 6 Cal.5th at p. 282 [Supreme Court has "previously noted that evidence of planning, motive, and manner of killing is often relevant to this

inquiry"].)⁵ But "these factors do not "exclude all other types and combinations of evidence that could support a finding of premeditation and deliberation."" (*People v. Lopez, supra*, 5 Cal.5th at p. 355.) Rather, "[t]hey are simply an "aid [for] reviewing courts in assessing whether the evidence is supportive of an inference that the killing was the result of preexisting reflection and weighing of considerations rather than mere unconsidered or rash impulse."" (*Ghobrial*, at p. 278.) Nevertheless, "[w]hen the record discloses evidence in all three categories, the verdict generally will be sustained." (*People v.*

In Anderson, supra, 70 Cal.2d at pages 26-27 the Supreme Court stated, "The type of evidence which this court has found sufficient to sustain a finding of premeditation and deliberation falls into three basic categories: (1) facts about how and what defendant did *prior* to the actual killing which show that the defendant was engaged in activity directed toward, and explicable as intended to result in, the killing—what may be characterized as 'planning' activity; (2) facts about the defendant's *prior* relationship and/or conduct with the victim from which the jury could reasonably infer a 'motive' to kill the victim, which inference of motive, together with facts of type (1) or (3), would in turn support an inference that the killing was the result of 'a pre-existing reflection' and 'careful thought and weighing of considerations' rather than 'mere unconsidered or rash impulse hastily executed' [citation]; (3) facts about the nature of the killing from which the jury could infer that the manner of killing was so particular and exacting that the defendant must have intentionally killed according to a 'preconceived design' to take his victim's life in a particular way for a 'reason' which the jury can reasonably infer from facts of type (1) or (2)."

Stitely (2005) 35 Cal.4th 514, 543; see *People v. Disa* (2016) 1 Cal.App.5th 654, 665 [same].)

3. Substantial Evidence Supports the Jury's Finding of Deliberation and Premeditation

The record, viewed in light of the *Anderson* guidelines, amply supports the jury's finding of deliberation and premeditation.

a. Motive

A reasonable inference from the circumstances leading to Rodriguez's attempt to kill Flores is that Rodriguez shot Flores in retribution for Flores's failure to create a functioning counterfeit credit card. Rodriguez disputes this, pointing out there was no evidence he had met Flores prior to the night of the shooting. In Anderson the Supreme Court discussed "facts about the defendant's *prior* relationship and/or conduct with the victim from which the jury could reasonably infer a 'motive' to kill the victim." (Anderson, supra, 70 Cal.2d at p. 27.) However, a finding of motive does not require the defendant to have known or interacted with the victim for any prescribed length of time or, indeed, for any time at all. (See, e.g., People v. Brady (2010) 50 Cal.4th 547, 562-563 [in determining whether defendant's murder of police officer during routine traffic stop was deliberate and premeditated, a rational trier of fact could find defendant's motive was to prevent the officer's discovery of an unauthorized firearm in defendant's car that would have led to his arrest; finding of deliberation and premeditation affirmed even though the "defendant's interaction with [the officer] was brief"]; People v. Young (2005) 34 Cal.4th 1149, 1167, 1183-1184 [the jury could reasonably conclude defendant, who "crashed through the living

room window" of a house, robbed one of the people inside the house, and shot and killed another who was trying to escape, had motive to kill victim "even if the specific victim was selected more or less at random"].)

b. Planning activity

That Rodriguez brought a loaded gun to Flores's hotel room reasonably supports the inference he had planned for the possibility of a violent encounter. (See, e.g., People v. Lee (2011) 51 Cal.4th 620, 636 [Supreme Court, applying the Anderson factors, concluded record yielded sufficient evidence to support a verdict of deliberate and premeditated murder; with regard to evidence of planning, the fact defendant brought a loaded handgun with him on the night of the murder indicated "he had considered the possibility of a violent encounter"]; *People v.* Marks (2003) 31 Cal.4th 197, 230 [where defendant shot and killed taxi driver after he had given defendant a cab ride, there was evidence of planning because defendant had brought a gun instead of money and asked his girlfriend to leave the taxi before shooting the driver; "if he brought a gun rather than money with which to pay for the taxi ride, it supports the inference that he planned a violent encounter with" the victim].)

Significantly, Rodriguez left his gun with Hernandez at the hotel room when he and Flores went to the gas station. This suggests Rodriguez did not intend to use the gun during his attempt to test the counterfeit card but rather in dealing with Flores and the creation of the card.

Moreover, the jury could reasonably infer Rodriguez was considering whether to kill Flores from the time he discovered the counterfeit card had failed to work until he shot Flores in the hotel room. (See *People v. Brady, supra,* 50 Cal.4th at pp. 563-

564 ["[a] rational trier of fact could have concluded defendant, knowing he illegally possessed a firearm, rapidly and coldly formed the idea to kill" police officer while the officer twice instructed defendant to move his car, followed defendant to parking lot, initiated traffic stop, got out of patrol vehicle and talked with defendant, even though these events occurred "all within the space of a few minutes"]; *People v. Millwee* (1998) 18 Cal.4th 96, 134-135 ["defendant had ample opportunity while traveling up the hill and retrieving the gun to consider whether and how to use lethal force in order to remove property from the house"].) Rodriguez's silence during the return trip, his visible anger and the statement he wanted to show Flores he "wasn't messing around" all constitute evidence supporting this inference.

Finally, as Rodriguez acknowledges, asking Hernandez for his gun before shooting Flores constitutes evidence of planning. (See *People v. Salazar* (2016) 63 Cal.4th 214, 222-223, 245 [where defendant brought a loaded semiautomatic pistol to a restaurant in gang territory to protect it from encroachment by members of rival gangs, telling a fellow gang member to get his "cuete" when they saw the victim in the restaurant parking lot constituted substantial evidence of planning].)

Rodriguez argues bringing a gun to the hotel room does not support a finding he planned to kill Flores because there was no evidence he had any reason to suspect trouble during their meeting. He also asserts there is no logical connection between bringing the gun to the hotel room and his purported anger following the failed attempt at counterfeiting. Rodriguez appears to contend the theory he brought the gun to the room as part of a plan to attack Flores cannot be reconciled with the argument his

attempt to kill Flores was motivated by his anger at Flores's failure to create a working fraudulent card.

A rational trier of fact, however, could reasonably infer Rodriguez brought the gun to the hotel room expecting he may want to use it in the event Flores was unwilling and/or unable to create the fraudulent card. This scenario is supported by Flores's trial testimony that he had not arranged to meet Rodriguez and Hernandez; rather, Rodriguez and Hernandez paid a surprise, unannounced nighttime visit to his hotel room to ask him to engage in illicit counterfeiting. In any event, the events between the unsuccessful attempt to use the counterfeit card and Rodriguez's shooting of Flores constitute evidence of planning even if Rodriguez's bringing the gun to the hotel room did not support such a finding.

c. Manner of attempted killing

Finally, the manner of Rodriguez's attempted killing of Flores supports a finding of deliberation and premeditation. Standing only a few feet from Flores, Rodriguez fired his gun seven or eight times, hitting Flores in the chest and stomach. At the time Flores was quietly sitting on the couch. (See, e.g., *People v. Marks, supra*, 31 Cal.4th at p. 230 ["the manner of the killing, a close-range shooting without any provocation . . . or evidence of struggle, likewise demonstrates premeditation and deliberation"]; *People v. Silva* (2001) 25 Cal.4th 345, 369 ["The manner of killing—multiple shotgun wounds inflicted on an unarmed and defenseless victim who posed no threat to defendant—is entirely consistent with a premeditated and deliberate murder"].)

In sum, the record discloses evidence in all three *Anderson* categories of motive, planning activity and manner of the attempted killing. Rather than constituting, as Rodriguez

contends, mere isolated links in a broken factual chain, the evidence, taken together and seen in the light most favorable to the verdict, presents a cohesive set of facts from which a jury could reasonably find Rodriguez's attempt to kill Flores was deliberate and premeditated. Substantial evidence supports this finding.

DISPOSITION

The judgment is affirmed.

PERLUSS, P. J.

We concur:

SEGAL, J.

FEUER, J.